IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 273 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAVINBHAI BECHERBHAI VANKAR & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR SAMIRKHAN PATHAN for Appellant(s) : 1 - 3.
MR AJ DESAI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 03/11/2006

ORAL JUDGMENT

1. Present appeal- Criminal Appeal No. 273 of 2006 was notified with Criminal Misc. Application Application No. 1712 of 2006. The Criminal Misc. Application is filed praying for suspension of conviction.

On the earlier occasion, while the Criminal Misc. Application was argued, it transpired that the Criminal Misc. Application is likely to take almost same time which the final hearing of the Criminal Appeal is expected to take and, therefore, at the request of the learned advocate for the appellants-applicants, the Registry was directed to notify the Criminal Appeal for final hearing today.

2. At the request of the learned advocate for the appellants, the Criminal Appeal is taken up for final hearing without insisting for supply of paper book, the learned APP has no objection. The record and proceedings of this case is already received, which is perused at the time of hearing of the Criminal Appeal.

3. The appellants, three in number, original accused Nos. 4,5 and 6 are before this Court being aggrieved by judgment and order dated 6.2.2006 in Special Case No. 130 of 2003 passed by the Presiding Officer, Fast Track Court, Palanpur. The learned Fast Track Court Judge was pleased to convict present appellants, original accused No.4- Pravinbhai Becharbhai Vankar, original accused No.5 Sandhyaben Pravinbhai Vankar and original accused No.6 Galbabhai Becharbhai Vankar for the offence under Sections 504 and 506(2) read with Section 114 of the Indian Penal Code. The learned Fast Track Court Judge was pleased to convict the appellants for the offences under Sections 323, 324 read with Section 114 of the Indian

Penal Code, Section 135 of the Bombay Police Act and Section 3(1)(10) of the Atrocities Act read with Section 114 of the Indian Penal Code.

The learned Fast Track Court Judge was pleased to punish the appellants- original accused Nos. 4,5 and 6 alongwith the other accused with a fine of Rs. 200/- for the offence under Section 504 read with Section 114 of the Indian Penal Code and in default, was pleased to order simple imprisonment for a period of 15 days. So far as offence under Section 506(2) read with Section 114 of the Indian Penal Code is concerned, the learned Fast Track Court Judge was pleased to punish the appellants- original accused Nos. 4, 5 and 6 alongwith other accused with fine of Rs. 500/- and in default, 30 days' simple imprisonment.

Learned advocate Mr. Y.S. Lakhani with Mr. Samirkhan Pathan, appearing for the appellants, submitted that the appellants have paid the fine amount, totalling to Rs. 700/- each. He also invited attention of the Court to an endorsement made below the judgment and order of the learned Fast Track Court Judge, Palanpur to that effect.

4. The facts of the case as set out in para 2 of the judgment are: that, complainant Rashmikant Narsinhbhai Vankar was present at his residence in village Kanodar, Taluka Palanpur on the day of the incident, i.e. 19.5.2002, at about 6.00 p.m. At that

time, accused Nos. 4,5 and 6 (present appellants), who are residing in the vicinity had taken a quarrel with his uncle- Amrabhai in the matter of discharge of water. That being so, the complainant and his father-Narsibhai had asked these accused (Nos. 4,5 and 6) not to quarrel and tried to pacify them. As all these three accused were abusing, they were told not to do so.

So far as the present appellants are concerned, this is the only part which pertains to them. The complaint then proceeds further and narrates that:

After about half an hour, i.e. at about 7.00 p.m., these persons (accused Nos. 4, 5 and 6) instigated the accused (1) Mangaji Thakor, (2) Ranjitsinh and (3) Abhesinh Thakor and sent them to beat Amrabhai- uncle of the complainant. At that time, father of the complainant- Narsinhbhai intervened. Accused Mangaji Thakor armed with a 'spade' gave a blow on the head of Amrabhai- uncle of the complainant with blunt portion. Accused Ranjitsinh armed with 'sword' tried to assault Narsinhbhai- father of the complainant but his blow fell on a left hand finger. The sister of the complainant also intervened. She was beaten by accused Dadamben, who came running from her home and assaulted with a 'brick' at the back of Ritaben- sister of the complainant.

The complaint then proceeds to narrate that the

complainant and his uncle Pethabhai intervened and rescued his uncle Amrabhai and his father Narsinhbhai to avoid further beatings. Hearing noise ('Hobado'), accused -Rameshbhai Pakhaji Thakor, residing in the vicinity, came armed with 'pipe' from his house and gave a blow on left knee of his uncle-Amrabhai and while leaving, threatened by saying that “you are saved today, but, if hereafter you take any quarrel with regard to discharge of water on the way, we will kill you”.

5. The complaint was filed at Taluka Police Station, Palanpur. The offence was registered after necessary investigation. The chargesheet was filed in the Court of learned Chief Judicial Magistrate, Palanpur for the offences under Sections 323, 504, 506(2), 337 and 114 of the Indian Penal Code, Section 3(1)(10) of the Atrocities Act and Section 135 of the Bombay Police Act. The same was registered as Criminal Case No. 2124 of 2002. Thereafter, the said case was transferred by the Chief Judicial Magistrate First Class to 5th Joint Civil Judge (S.D.) and the Judicial Magistrate First Class, Palanpur. The learned Judge, having no jurisdiction to try the case, committed the same to the Court of sessions. In Sessions Court, the case was numbered as Special Case No. 130 of 2003 and was transferred to the Court of Assistant Sessions Judge for trial.

6. On accused appearing on service of summons, after ascertaining receipt of the police papers, the

learned Assistant Sessions Judge framed a charge vide Exh.5 for the offence under Sections 337-114, 324-114, 323-114, 504-114, 506(2)-114 of the Indian Penal Code, also for the offence under Section 135 of the Bombay Police Act and Section 3(1)(10) of the Atrocities Act.

The charge was read-over to the accused. The accused having denied the offence, the Court proceeded with the trial.

7. The prosecution has examined the following witnesses:

PW Nos.	**Name of the persons**	**Exhibit Nos.**	**Particulars**
01	Rashmikant Narsinhbhai Vankar	20	Complainant
02	Ritaben, wife of Rajesbhai	26	Sister of the complainant
03	Amrabhai Bhemabhai Parmar	40	Uncle of the complainant and the injured witness
04	Narsinhbhai Bhemabhai	44	Father of the complainant and the injured witness
05	Dr. Ishwarbhai Ramjibhai Patel	53	Medical Officer

PW Nos.	Name of the persons	Exhibit Nos.	Particulars
06	Amin Isub Isubbhai Dhuka	59	Panch witness
07	Atulkumar Ramnikbhai Nai	60	Panch witness
08	Kiritkumar Ramanlal Kantawala	63	Retired Dy.S.P.
09	Ishwarsinh Dhanasinh	64	Head Constable
10	Sunilkumar Gangadhar Patil	66	Investigating Officer

8. In addition to the aforesaid oral evidence, the prosecution also relied upon the following documentary evidence:

Exhibit Nos.	Particulars
21	Complaint
22	True copy of the caste certificate
50	Panchnama of scene of offence
55	Treatment certificate of Amrabhai Bhemabhai
56	Treatment certificate of Narsinhbhai Bhemabhai
57	Treatment certificate of Ritaben Narsinhbhai
61	Recovery panchnama of the weapon (sword)
65	Intimation letter by P.S.O. to P.S.I., Palanpur Taluka Police Station
67	Recovery panchnama of weapon (spade)
68	District Magistrate's Notification under Section 37 of the Bombay Police Act (Prohibitory Orders)

9. The learned Additional Public Prosecutor filed

closing pursis, vide Exh. 69, declaring that the prosecution evidence is over. Thereafter, the statements of accused under Section 313 of the Code of Criminal Procedure were recorded. The accused denied the charge and stated that they do not wish to examine themselves or any witnesses in support of their defence. The accused stated in their statement that, due to vengeance, a false case is filed against them. They filed their written reply, vide Exh. 72, in which it is stated that about six months prior to the incident, son of one of the witness- Pethabhai Bhemabhai had kidnapped a married woman from village 'Navisana', therefore, village people of 'Navisana' had called a meeting of the 'caste' people at village 'Majadar'. Accused Pravinbhai Becharbhai Vankar- appellant No.1- original accused No.4 is leader of the 'Vankar Bavisi Gor' community. The 'caste' people decided to 'out-caste' the father of the complainant- Narsinhbhai Bhemabhai and Pethabhai Bhemabhai. For the said act of putting of 'out of caste', father of the complainant- Narsinhbhai was hatching a doubt that it was at the instance of appellant No.1- original accused No.4- Pravinbhai Becharbhai Vankar. Later on, on payment of huge fine, both these persons (Narsinhbhai Bhemabhai and Pethabhai Bhemabhai) were again allowed entry in the caste. The complainant was having grudge against present appellants- original accused Nos. 4 to 6, he also felt that the other accused are close to the present appellants, and hence to see that all the accused are imprisoned, the complainant and the

witnesses have falsely implicated the present appellants.

10. The learned advocate for the appellants submitted that this is a case of glaring abuse of process of law. He submitted that neither from the complaint nor from the statement of any of the witnesses, the prosecution is able to point out the utterance of any words, much less 'insulting' words, for the community, which could constitute an offence under The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to to as “Atrocities Act”).

11. The learned advocate for the appellants submitted that even the learned Fast Track Court Judge has taken note of this fact in para 41 of the judgment. He has also taken note of the fact that under Section 7 of the Atrocities Act, only an officer of the rank of Dy.S.P. can investigate an offence under the Atrocities Act, but then in the case the officer has not discharged his duties properly. He only visited the scene of offence, verified the panchnama and recorded additional statement of the witnesses. Beyond that, he has not done anything in the matter. Not only that, as the present appellants- original accused Nos. 4,5 and 6 themselves belong to the same community, it could not have been alleged that an offence is committed under the Atrocities Act by them. So far as rest of the accused are concerned, neither in the complaint

nor in the statement of the witnesses, it is not even remotely stated that they acted in such a manner, so as to constitute an offence under the Atrocities Act. That being so a responsible officer of the rank of Dy.S.P. ought not to have filed a chargesheet alleging an offence under the Atrocities Act.

12. At this juncture, learned APP Mr. A.J. Desai, submitted that the learned Special Judge (Atrocity) has committed an error in framing the charge under Section 211 of Cr.P.C. on 29.7.2004. Without there being even iota of evidence of an offence being committed under Section 3(1)(10) of the Atrocities Act, he framed a charge under the same. The learned APP also pointed out that, on 29.7.2004, the charge was framed against accused Nos. 1 to 7, whereas against accused No.8- Dadamben, wife of Daduji Thakor, charge was framed on 19.1.2005. Even at that time, the learned Fast Track Court Judge did not notice this obvious fact that there was no offence made out under Section 3(1)(10) of the Atrocities Act.

The learned APP submitted that subsection 5 of Section 211 of Cr.P.C. cast a duty on the Court to satisfy itself that **every legal condition required by law to constitute the offence charged was fulfilled in the particular case.** The learned APP also submitted that if this care was taken by the learned Judge then, even if there was same lapse on the part of the police officer- Deputy Superintendent of

Police, process of law could not have been abused.

13. The learned advocate for the appellants invited attention of the Court to the deposition of Rashmikant Narsinhbhai Vankar- PW1 Exh. 20. He submitted that the learned Fast Track Court Judge has reproduced his deposition in para 23 of the judgment. He submitted that it is not the case where the deposition was long and the learned Judge was required to summarise the same and record the gist of it. The deposition consists of two paragraphs only. In the second paragraph of the deposition, the first part of the incident is narrated, whereas in the third paragraph, second part of the incident is narrated. The learned advocate submitted that it is only the first part of the incident, which is relevant for the purpose of present appellants. He submitted that as is mentioned in the complaint and so is narrated by the witnesses, 'on 19.5.2002 at about 6.00 p.m., accused Nos. 4,5 and 6, i.e. the present appellants, had some quarrel with the uncle of the complainant (Amrabhai) with regard to discharge of filthy water. At that time, the complainant and his father went to the accused and tried to persuade them, at that time, 'accused were abusing'. The learned advocate submitted that these are the only words which are used not only in the complaint by the complainant but by every witness who is examined in support of the case of the prosecution. Neither in the complaint nor by any witness, 'actual words' used are narrated or

reproduced. It is the case of the prosecution that, after the accused were persuaded not to abuse, everything came to an end.

Second part of the incident started only after about half an hour, around 7.00 p.m. As per the say of the complainant, on instigation of the present appellants, another group of persons (the remaining accused) came to the scene of offence and physically assaulted the uncle of the complainant, also his father when he intervened and his sister, who too intervened to rescue her father. At no place, either in the complaint or in the deposition, it is stated that either the present appellants or the remaining accused uttered any such words, which can constitute an offence under the Atrocities Act.

14. The learned advocate next invited attention of the Court to the deposition of Amrabhai Bhemabhai Parmar- uncle of the complainant, who is examined as PW 3 at Exh. 40. His evidence is considered by the learned Fast Track Court Judge in para 25. He submitted that even this witness, who is an injured witness, has also not said anything beyond that, 'the present appellants started abusing the deponent, his brother Narsinhbhai and his nephew Rashmikant Vankar'. He only deposes a sentence more that, despite an attempt by his brother Narsinhbhai to persuade the accused (the present appellants) by saying that why are they abusing though they only are discharging filthy water towards the house of the

complainant, but the accused were not pacified and continued to quarrel.

This witness also states that, thereafter, the second part of the incident took place, after about 15 to 20, minutes, when the other accused on being instigated by the present appellants came on the scene of offence.

15. The learned advocate for the appellants next invited attention of the Court to the deposition of Ritaben Rajeshbhai (sister of the complainant), who is examined as PW 2 at Exh. 26. Her evidence is considered by the learned Judge in para 24 of the judgment. Her evidence is different than the evidence of other witnesses as she has stated that, 'the present appellants had brought the other accused'. But then this witness also does not state that either the present appellants or the other accused uttered any such words which can constitute an offence under the Atrocities Act. Last but not the least, PW 4- Narsinhbhai Bhemabhai- father of the complainant, examined at Exh. 44, whose deposition is reproduced in para 26 of the judgment also does not substantiate the case of the prosecution so far as an offence under the Atrocities Act is concerned.

16. The learned advocate for the appellants submitted that in para 33 of the judgment, the learned Fast Track Court Judge has recorded a conclusion by saying that taking into consideration

the depositions of the aforesaid witnesses and the documentary evidence, present appellants- accused Nos. 4, 5 and 6 had first come to the place of the complainant and had uttered filthy abuses with regard to discharge of the water and thereafter, after half an hour, the other accused initially assaulted the uncle of the complainant and also the father of the complainant and the sister of the complainant when they intervened. In this very paragraph, the learned Fast Track Court Judge has recorded a finding that “thereafter all the accused administered threat to life to the witnesses”. He submitted that this finding is not supported by evidence and, therefore, the conviction based on this finding is required to be quashed and set aside.

17. The learned advocate for the appellants submitted that in para 37, the learned Fast Track Court Judge has clearly recorded a finding that accused Nos. 4,5 and 6- present appellants belong to 'Harijan' community and therefore, there is no question of an offence being registered against them under the Atrocities Act.

18. The learned advocate for the appellant submitted that in para 39, the learned Fast Track Court Judge has recorded a finding that 'enmity' between the accused and the complainant is noticed. He has further recorded that it has come on record that the complainant has been filing complaints under the Atrocities Act and receiving money for compromising

the same against various persons.

19. The learned advocate for the appellants submitted that in para 40, the learned Fast Track Court Judge has recorded a finding that, 'taking into consideration the evidence of all the witnesses, it is not established that all the accused were present at the same place at the same time'.

The learned advocate for the appellants submitted that if that is so, the question of an offence being committed either under Section 504 or 506(2) is also ruled out.

The learned advocate for the appellants submitted that in the findings recorded in paragraphs 33 and 40 are self-contradictory and on that ground, the judgment of the learned Fast Track Court Judge stands vitiated on account of non-application of mind and requires to be quashed and set aside by this Court.

20. The learned advocate for the appellants vehemently submitted that in para 41, it is recorded in the opening sentence that “accused Nos. 4, 5 and 6 (present appellants) are of 'Vankar' community and, therefore, a complaint against them under the Atrocities Act is not maintainable”.

The learned advocate submitted that the learned Judge has also recorded a finding that none

of the witnesses has stated that any insulting word/s with regard to their caste was/were uttered.

The learned advocate submitted that the learned Fast Track Court Judge, after having made certain observations regarding method and manner of investigation by the responsible police officer of the rank of Dy.S.P., has left the matter at that stage and has proceeded further to record that only because the offence under the Atrocities Act is not investigated by an officer of the rank of Dy.S.P., the entire trial is not vitiated and has convicted the accused for the other offences under the relevant provisions of Indian Penal Code holding that those offence can be investigated by a police officer of any rank.

The learned advocate for the appellants submitted that, 'this case' must cause concern to one and all. He submitted that it is clear from paragraph 41 of the judgment that, 'the police officer of the rank of Dy.S.P. did not discharge his duty as expected from him under the law'. The learned Judge has also recorded a fact that, 'as the present appellants- original accused Nos. 4,5 and 6 belong to the same community, the case of the prosecution under the Atrocities Act is not maintainable against them'. In light of these findings, the matter should have been taken to its logical end by reporting this fact to the appropriate authority for taking appropriate action against the

person concerned for dereliction of duty.

21. The learned advocate for the appellants next submitted that, so far as the offence under Sections 504 and 506(2) of the Indian Penal Code is concerned, no case is made out against the present appellants. He submitted that under Section 504, it is only when, 'one intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence', an offence is committed. He submitted that, in the present case, ingredients of Section 504 of I.P.C. are not satisfied and in absence of 'the words actually uttered', it cannot be said that the accused intentionally insulted the complainant and the other persons, thereby provoking them so that they will break the public peace or commit any other offence.

22. The learned advocate for the appellants invited attention of the Court to a decision of this Court in the matter of *Dadia Ottamchand Motichand and another Vs Hemkunver Popatlal and the State* reported in *1961 (Vol.II) GLR 196,* wherein this Court has held that :

> “The insult, (which is one of the ingredients of the offence) may be by words or by conduct. Abusive words may amount to an offence under sec.504 Indian Penal Code, if other ingredients are present. If the other ingredients are not

present, mere abuses would not amount to an offence under sec.504, I.P. Code.

It is an important ingredient of the offence under sec.504 I.P.C. that in addition to intentional insulting, the person insulting must thereby give provocation to another person insulted to break the public peace or to commit any other offence.”

He submitted that firstly, in the present case, the words which are uttered have not come on record, still it is alleged that an offence under Section 504 of the Indian Penal Code is committed.

The learned advocate for the appellants submitted that uttering of words to a person which may cause insult and may provoke that person to break the public peace or to commit any other offence is highly subjective and, therefore, unless the actual words uttered are placed on record before the Court, it is not possible for the Court to hold that an offence under Section 504 of the Indian Penal Code is committed. He submitted that it is possible that one may get provoked by a particular word, whereas other may feel the same to be 'innocuous', therefore, until the actual words spoken are placed on record, the Court cannot hold an offence under Section 504 of the Indian Penal Code was committed.

23. The learned advocate for the appellants relied

upon a decision of this Court in the matter of *Patel Narottam Tulsidas Vs State of Gujarat* reported in *1973 GLR 522.* He submitted that the Hon'ble Court was pleased to hold that "Mere abuse not sufficient to prove the act within the meaning of Section 504- Intention to provoke any person to break peace essential". He submitted that it will be appropriate to refer to paragraph 2 of the said judgment, the only paragraph reported, it reads as under:

> "2. In order to enable the court to decide whether, particular words used by the accused were likely to give provocation to Murlidhar so as to cause him to break the public peace or to commit any other offence as contemplated by sec.504 of the Indian Penal Code, it was necessary for the prosecution to point out the actual words used by the accused. In the present case, however, as stated by the learned Additional Sessions Judge, the prosecution did not disclose the actual words used by the accused. It appears that there was exchange of abuses between Murlidhar and the accused and there is no material on the record from which the court can decide that, the abuses given by the accused were in fact, filthy or indecent as alleged by the prosecution. It is true that, in order to constitute intentional insult with intent to provoke breach of the peace or with requisite knowledge, as contemplated by sec. 504 of the Indian Penal Code, it is not necessary,

that abuse should be filthy or indecent. But, in the present case, as pointed out by the learned Additional Sessions Judge, there is no satisfactory evidence on the record to show that, the accused had abused Murlidhar with the intention of insulting him in order to give him provocation to break the public peace. Mere abuse in the absence of any intention to provoke any person to break the public peace or to commit any other offence or, of knowledge that, a breach of the peace was likely, does not fall within sec.504 of the Indian Penal Code."

24. The learned advocate for the appellants submitted that so far as the offence under Section 506(2) is concerned, so far as the present appellants, i.e. accused Nos. 4,5 and 6 are concerned, they are falsely implicated for the same. He submitted that, in view of the finding recorded by the learned Fast Track Court Judge in paragraph 40 that, 'all the accused were not present at the same place at the same time', earlier finding that, 'all the accused had threatened the witnesses for life' is dislodged. In this regard, he invited attention of the Court to a decision of this Court in the matter of Munsafkhan Yasinkhan Pathan & others Vs. (The) State of Gujarat, which is unreported judgment mentioned in 2002(1) G.L.H. (U.J.) 4, head-note of which is as under:

"Indian Penal Code, 1860- Ss. 506(2) & 503- Criminal intimidation-Threat to cause death or grievous hurt- Necessary ingredients- Complainant should have been alarmed by the threat administered to him- Evidence indicates a clear absence of any apprehension and/or fear so as to cause alarm to the complainant- No evidence that because of threat, complainant was unable to attend to his duties of any point of time after he lodged the complaint- Words uttered by the accused did not cause any alarm to the complainant- Offence not proved."

25. In view of the aforesaid discussions, this Court finds that the present appellants- accused Nos. 4 to 6 convicted for the offence under Sections 504, 506(2) read with Section 114 of the Indian Penal Code, deserve to be acquitted of the charge levelled against them. The conviction recorded against them is quashed and set aside. The judgment and order of the learned Presiding Officer, Fast Track Court, Palanpur so far as it relates to the present appellants- original accused Nos.4 to 6 is hereby quashed and set aside. As the present appellants- original accused Nos. 4 to 6 are acquitted of the charge, fine paid by them be refunded to them.

26. Office is directed to send a copy of this judgment alongwith a copy of the judgment of the learned Fast Track Court Judge to the Secretary,

Home Department for taking necessary action in the matter, more particularly in light of the observations made in paragraph 41 of the judgment of the learned Fast Track Court Judge which are not disturbed by this Court.

Sd/-

(RAVI R. TRIPATHI, J.)

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